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OBSERVATIONS ON THE  
ENGLISH TITHE BILL

*PLACE:*

LONDON

*DATE:*

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London 1836.

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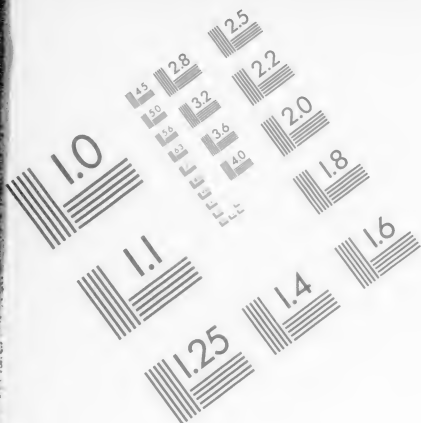
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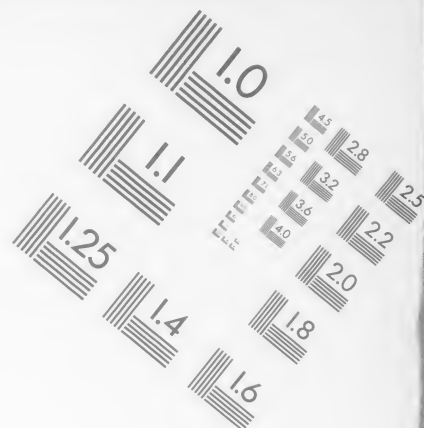


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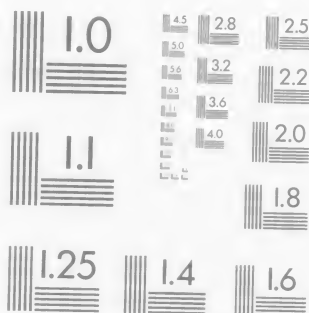
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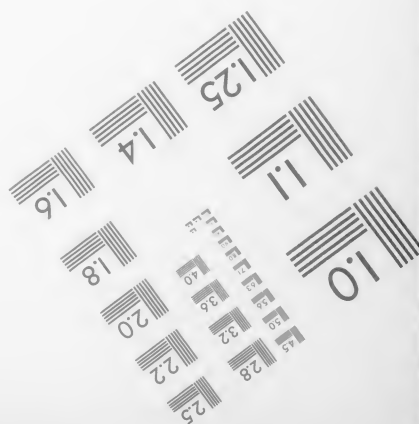
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No. 10.

OBSERVATIONS  
ON THE  
ENGLISH TITHE BILL;

AND ON THE  
(APOLOGETIC)

“REMARKS”  
OF THE REV. R. JONES.

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Non tali auxilio, nec defensoribus istis  
Tempus eget.

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VIRG.

BY  
A MEMBER OF THE CENTRAL TITHE COMMITTEE.

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LONDON:  
RIDGWAY AND SONS, PICCADILLY.

1836.

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[Price Sixpence.]

## OBSERVATIONS,

&c. &c.

IN consequence of the late progress of the English Tithe Bill in the House of Commons, notwithstanding the almost universal opposition of the payers of tithe from *titled* lands, I am induced to offer publicly, as I have often offered privately, some observations on the principles and tendency of that measure; especially, as a pamphlet, apparently designed to defend its provisions, has been just published by the Rev. R. JONES.

I purpose, however, to state my view of this subject as briefly as I can; noticing Mr. JONES's "Remarks" only when they seem to apply, and endeavouring to avoid extraneous and irrelevant discussions.

The real question, then, I deem to be this:—

Is it consistent with justice and sound policy, that the Bill now before Parliament should become the permanent Tithe Law for England?

This Bill takes for granted the two following Propositions:—

I. That the Titheholder is equitably entitled to the full amount of his recent claims.

II. That the English Landowner may be justly bound to pay for ever the *full* net value\*, in corn, of the tithe recently grown by his tenants; and *that*, without regard to any of the circumstances under which the recent crops were raised, to the future culture of the lands, or to the system of Tithes in the other parts of the empire.

Now, if *both* these Propositions could be incontrovertibly proved, then, indeed, the Bill might safely pass; and I might accede, perhaps, to the opinion of Mr. JONES, that it would "do effectually and fairly the work which it proposes to do†."

But if *either* of them can be successfully impugned, the Bill which is based on them assuredly ought not to receive the sanction of Parliament. And if *either* of them is liable even to doubt, it would be very hazardous to legislate on them before that doubt is removed.

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\* I shall show, by and by, (see p. 4), that the Bill does not contemplate any reduction; the deduction of from 25 to 40 per cent.—if the clause (29, now 34) were practicable!—being merely an ALLOWANCE in lieu of the expenses of collection, marketing, &c.

† Remarks, p. 8.



I shall proceed, therefore, to examine these Propositions separately.

- I. That the Bill assumes the equitable right of the Titheholder to the full amount of his recent claims, is abundantly clear from its whole tenor\*.

Its professed purpose, indeed, is not only to enforce those claims, but, further, to increase their security by a *lien* on the land.

The sanction which the courts of Law have given to these claims is matter of sufficient notoriety. The claims arise, in fact, chiefly from the decisions of those courts. But the *equity* of those decisions has been boldly questioned of late, and by parties who are admitted to be well acquainted with the subject.

I shall first state the principal arguments which these parties employ, and then notice whether they are weakened by any Remarks of Mr. JONES.

In the first place, then, it is denied that the Titheman has an *equitable* right to be exempted from contributing to the payment of the *Taxes* incidental to the raising of this Tithe, and at the same time entitled to the *increased price* by reason of that taxation.

Since the Taxes were incurred professedly for the protection of all property—Tithe property as well as other property,—and since taxation, *indirect* taxation more especially, greatly enhances the costs of agriculture, and by consequence the cost of producing the Tithe—it is contended, that the Titheholder, albeit he is entitled to have the land cultivated for him, is not also entitled to have the *taxation paid for him*, and, at the same time, to have the *enhanced price* secured to him which that taxation renders indispensable to the agriculturist.

This argument, as well as the next, is forcibly stated and copiously illustrated in the writings of our chairman, Mr. BRANFILL†. And the question ought assuredly to be set at rest, before any commutation is enforced by Law.

It is argued, further, that the additional income which the Titheman acquired from the compulsory and profitless employment of the Poor, was not founded on equitable grounds, and ought not, therefore, to be made a permanent charge on the land; especially, as it was not itself of a permanent character. But this subject is so well known, that it seems necessary merely to refer to it, and to the discussion thereon, in the writings to which I have referred above‡.

A third consideration cannot, it is thought, be safely dismissed from the attention of the Legislature.

\* For,—

1. When tithes are taken in kind, the average of their full net value for the last seven years is to be charged on the land for ever. See clause 28, now 33.

And,—

2. Where compositions have prevailed, they regulate the future payments in a similar way; unless they be appealed against. See clause 29, now 34.

But,—

3. If the compositions are appealed against, the *gross* value of the Tithe raised is to be ascertained, and “without any deduction (see clause 31) for the expenses of collection, marketing,” &c. In lieu of these expenses, however, an *allowance* is proffered which varies from 25 to 40 per cent.

Now, we have it from the best authority, that the lowest amount of these expenses (in Thanet, for instance), is 25 per cent., and that they often exceed 40 per cent.

It is much to be regretted, then, that this regular and constant allowance has been totally misunderstood by many; as if the Bill in any part, or in any respect, contemplated the slightest *reduction* from the net value of Tithe to its owners. The raising of that value it does indeed contemplate, and endeavour to ensure.

How Mr. Jones could not only countenance this extraordinary delusion, but even make it, as it were, the citadel of defence for the Bill,—talking of three-fifths of the value of Tithes as the only future claim on the land!—it is totally out of my power to divine.—See pp. 36—40 of his “Remarks.”

† See “Hints to Legislators, by a Landowner,” Sherwood, 1833; and “The Right of the Titheholder, &c. by C. E. BRANFILL, Esq.,” Gossling and Eggle, 1834.

‡ See also “A Voice from Kent.” Webb, Regent-street.

It is the belief of many influential Members of Parliament, and of numerous and increasing constituencies throughout the country, that the Corn Laws are, at the least, inconsistent with sound international policy.

These parties cannot believe that the Titheowner is entitled, in perpetuity, to what they call a fictitious and unjust value of produce. And those who are of a different opinion ought surely to keep in view the consequences of a change that *may* come.

In Mr. JONES's defence of the impending Bill, no notice is taken of any one of these subjects\*, all-important and strictly relevant as they seem to be. Yet he has a chapter, headed, “*On the Proposition that Tithe ought not to be taken of produce when it arises from a great outlay of Capital.*”

In this chapter there is something curious,—a specious grappling with the subject, and a dexterous avoiding of all the more important views which it suggests.

There is, however, therein, a statement, an argument, and a peroration.

Mr. JONES states, that even in olden time the land was tilled—even as now east of Germany!—and, I suppose, Tithe of some sort paid. But he does not say in what manner Tithe was paid, or to what *special purposes* it was applied in those days. See, however, “A Legal Argument,” by W. Eagle, Esq.

He argues, moreover, that if the application of capital to the soil increases the Tithe, it also increases the rent. But he does not say whose capital he refers to, the Titheman's or the Landlord's†.

The peroration, anon, warns the Landowners of the jeopardy of their rentals, if they pry too closely into these matters. Others warn them of their danger if they pass a compulsory Tithe Bill, without duly considering the whole subject, and in all its bearings.

Having thus mooted the principal questions that relate to the first Proposition assumed by the intended Bill, I shall now proceed to notice the second Proposition, which is of far greater importance and of a more dangerous tendency.

- II. Even if the former Assumption could be incontrovertibly demonstrated, it does not seem to follow, as a matter of course, that the Landowners, respectively, ought to be bound for ever by the claims to which their Tenants had, wisely or unwisely, subjected themselves during a particular period.

That the Bill purposes, nevertheless, so to bind the Landowners, is perfectly clear from Clauses 33 and 34. This, in truth, is the Essence of the Measure.

If these clauses did not actually appear in print, few persons, I apprehend, who know any thing of agricultural affairs, could be induced to believe that they might be seriously contemplated.

Before entering on the discussion of this extraordinary proposition, I shall endeavour to dispose of the following preliminary question.

Who, in reality, pay the Tithes?

Amongst the payments to which the tiller of the soil is liable, a very important item is the Tithe. And he must calculate, in the first instance, on meeting this impost by means of his market returns. Now, those returns are sufficient

\* He mentions, however, that when the farmers, in despair, contrived to make the Poor Laws affect the Tithe income, they were guilty of an indictable offence, and punished accordingly.

But to the *ordinary* operation of these laws, he has not, I think, made the slightest allusion.

† In another place, however, he seems to fancy, or to wish it fancied, that it is the *tenant's* capital! As far as I have observed, the tenant expects back his capital with interest and profit. If he miscalculates, or is unfortunate, his case is an exception, not the rule.

for the purpose, as long as he gets what is called a remunerating price from the consumer.

In other words,—

*The Tithe*, as well as the other imposts which burden agriculture in England, *must be paid by the consumer*, in order to remunerate the producer.

When the cultivator, however, does not get a sufficient price, he is compelled, for a time, to make up the deficiency out of his own capital. But he will relieve himself as soon as he can, either by altering his culture, or by seeking a reduction of rent. The owner of the land will, therefore, have recourse to that mode of husbandry which he may find most to his advantage, as soon as the Tithe claims begin to affect his interests.

It is generally admitted by agriculturists, that 60s. per quarter would be about a remunerating price for wheat in England. Now the average of the last 20 years is about 62s.; of the last 7 years, about 57s.; but of the last 2 years, only about 43s. Consequently, it seems to be abundantly evident, that the Tithe was paid by the consumer for the far greater part of the last 20 years; that it has been gradually pressing on the producer for the last seven years; and that it is now rendering a change of culture absolutely necessary to the Landlord's beneficial interest in the soil, and an agistment Tithe of some 1s. and 6d. or 2s. per acre, his legitimate refuge from a corn Tithe.

With these observations\*, I think I might safely leave the reader to determine whether the second assumption of the Tithe Bill is just, or not just. And until they be refuted, no one can support the Bill on *equitable* grounds, be his views what they may of *expediency*, or of *local* interests.

The view taken by Mr. BRANFILL of a measure like the present must be very important, from his extensive and accurate knowledge of the subject, from his having been one of the chief means of stopping the two bad Bills of Lord Althorp, although they were not so bad as the Bill now pending, and from his exertions to discover and recommend an equitable measure, which would be, as he observes, a blessing to the country.

"Nothing," he says, (Right of the Titheholder, pp. 1—4) "could be so palpably absurd and unjust as to make the capital, skill, and industry of the Tenant, a criterion whereby to estimate the future charge upon the Landlord, circumstances over which he had no control, .... It would be no relief to take the burden just as it is, with all its inequalities, from the shoulders of one class of persons, and to bind it for ever on those of another. .... In order to effect this, the Legislature must at once deprive the Landowner of his most valuable rights in reference to these claims (*Tithes*). Of these rights, the most obvious is that of surrendering his land to pasture, with the view of diminishing the Tithes, whenever they press too closely on the profits of tillage. For the same laws which allow the Titheholder to sweep away annually one-tenth of the capital of the tiller of the earth [*when ~~these~~ are not adequate*], do not allow him to interfere with the capital of the grazier. The Tithe system presses with the greatest severity upon those lands which are the most difficult, and, by conse-

\* Mr. Jones seems to doubt whether the price of bread is enhanced by Tithes!—that is, by a tax equal to one-tenth of the whole produce. And he contends that an abolition of them would merely put more money into the landowner's pockets. He means, possibly, that the bread price, in this country, has been in some sort of an artificial state, and, therefore, that the removal of any burden on the production of corn would not materially lessen its price, but merely increase the balance between the costs of production and the price of produce,—on which balance rent depends. On general principles, I believe him to be wrong; and we may not remain for ever in an artificial state, and in the enjoyment of a sort of monopoly. Should the Government despoil the Chronometer-maker of every tenth chronometer, must he not spread its value over the remaining nine, or else speedily abandon his business, and leave his Landlord to uphold "an income that had actually accrued?"

quence, the most expensive, to cultivate. And exactly in proportion to that pressure is the value to the owner of the power to free himself from it, by exercising his right of ownership, whenever it shall answer his purpose to do so."

"Is the grazier," he continues, (pp. 4—6) "to be allowed to break up his pastures ..... almost tithe-free, merely because his land is *at present* in a state of pasture? And is the Essex and Kentish wheat grower to be *for ever* bound to pay a wheat tithe, whether he can grow it or not, merely because his land happens *at present* to be under tillage for wheat,—and that tillage fostered by a monopoly which the manufacturing districts are fast concentrating their strength to deprive him of?"

"Upon what ground is the boon to be extended to the former? ..... And why is the latter ..... to be punished by having his chains rivetted on him?"

Now these observations, with others equally pertinent to the present investigation, were written several years ago!—as if prophetic of the threatened measure.

Further, where compositions have prevailed, the Bill *perpetuates* them, unless they be appealed against. Now, these compositions were agreed to for mere temporary purposes, and when prices were high, but without the consent, and beyond the control, of the Landowner,—often contrary to his advice; yet he is to be bound for ever to pay what his tenant calculated,—often erroneously, of late,—on getting back from the public consumer. I will dismiss this project with one question:—Would it be fair to bind the tenant himself for ever to this temporary bargain; and, if not, what can we think of so binding the innocent, perhaps the remonstrating, landlord?

But a safety-valve is provided; and the Tithe actually grown may be substituted. *The Tithe of crops raised under a positive agreement that they should, on a fixed payment, be Tithe-free!* Where shall we look for a parallel attempt at legislation?

Yet was it here, in clause 34, that the memorable and most unaccountable *ignis fatuus* of a reduction glimmered for a time\*.

The foregoing are the heads only of some of the arguments that might be urged and illustrated in opposition to the assumptions of the Bill; and they are pointed chiefly against clauses 33 and 34. But there is another clause, in which the projected Tithe-payers,—the Landowners,—are deeply interested. I refer to the clause which appoints the Commissioners. Be it right that the Church, as one party interested, shall have the direct appointment of one Commissioner—upon what principle are the future Tithe-payers to have no representative in the Commission? Does the scope and spirit of the Bill afford them sufficient security? I beg of them to read clause 70, and then to conceive what would be their prospects, if sufficient power should be vested in any of the parties that projected this measure, to whatever extent it may be ultimately modified.

There are, nevertheless, two sorts of running excuses promulgated in defence of the intended Bill; and it is remarked, in the first place, that it will confer *local* advantages. Be it noticed, however, that by *local* and *partial* advantages, the apologists do not, in my estimation, refer to the advantages of Scotland and Ireland in opposition to England, but to the advantages that will be conferred on some counties and districts of England, in opposition to others,—such as Kent and Essex—in the same member of the Empire.

"Nothing," says a great Philosopher and a wise Statesman,—"nothing can be more pernicious, or more certain of introducing sedition and discord into a state, than that the government should favour some of the people, and neglect others†."

\* See the note in page 4.

† Qui (reip. prae)pos. parti civium consulunt, partem negligunt, rem perniciosissimam in civitatem inducunt, seditionem atque discordiam.—Cicero.

The other excuse is, that the subject is very difficult, and that no enactment can entirely avoid some unmerited pressure, and possibly some undeserved boon.

Ay: but your Bill confers a most valuable boon upon ALL the undeserving, and exactly in proportion to their demerits; whilst it severely punishes ALL the meritorious, and exactly in proportion to their claims for reward:—

That is to say,—

The more negligently, the more timidly, the more unskilfully, the more niggardly the land has been recently managed, the more nearly will it approach—be its intrinsic quality ever so good—to a total exemption from future Tithe payments; and the more diligently, the more boldly, the more skilfully, the more expensively the land has been recently managed—no matter under what temporary circumstances—the more nearly will it approach to entire confiscation.

Then, as it respects the *difficulty* of the subject:—why, that is only a reason for calm deliberation, for patient and searching investigation, for dreading a false and dangerous step.

“A good man,” says the author last quoted, “will commit no act, as long as a doubt remains whether it is just or unjust; for equity, he is persuaded, would be displayed by its own light, whereas doubt indicates a suspicion of injustice\*.”

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\* Bene præcipiunt, qui vetant quidquam agere, quod dubites æquum sit an iniquum: æquitas enim lucet ipsa per se; dubitatio cogitationem significat injuriæ.